

Agenda Item Form

Agenda Date: April 1, 2004

Districts Affected: #2

Dept. Head/Contact Information: Irene Ramirez, P.E. - 541-4431

Type of Agenda Item:

- | | | |
|---|--|--|
| <input checked="" type="checkbox"/> Resolution | <input type="checkbox"/> Staffing Table Changes | <input type="checkbox"/> Board Appointments |
| <input type="checkbox"/> Tax Installment Agreements | <input type="checkbox"/> Tax Refunds | <input type="checkbox"/> Donations |
| <input type="checkbox"/> RFP/ BID/ Best Value Procurement | <input type="checkbox"/> Budget Transfer | <input type="checkbox"/> Item Placed by Citizen |
| <input type="checkbox"/> Application for Facility Use | <input type="checkbox"/> Bldg. Permits/Inspection | <input type="checkbox"/> Introduction of Ordinance |
| <input type="checkbox"/> Interlocal Agreements | <input checked="" type="checkbox"/> Contract/Lease Agreement | <input type="checkbox"/> Grant Application |
| <input type="checkbox"/> Other _____ | | |

Funding Source:

- ☐ General Fund
- ☐ Grant (duration of funds: _____ Months)
- ☒ Other Source: Varies depending on Airport requests

Legal:

- ☒ Legal Review Required Attorney Assigned (please scroll down): Raymond Telles ☒ Approved ☐ Denied

Timeline Priority: ☒ High ☐ Medium ☐ Low # of days: 3

Why is this item necessary:

The civil engineering services agreement airport assignment will provide the city extended civil engineering consulting services for construction projects. This agreement will be used by the airport when deemed necessary.

Explain Costs, including ongoing maintenance and operating expenditures, or Cost Savings:

The consultant fee includes costs for civil engineering consulting services.

Statutory or Citizen Concerns:

None

Departmental Concerns:

None

TO : Mayor & Council
FROM: Patrick T. Abeln, A.A.E., Director of Aviation
CC: Jim Martinez, CAO
SUBJECT: Award to Parkhill, Smith and Cooper, Inc.
Civil Engineering Services – Airport Assignments
04-06-04 Council Agenda Item # 6G
DATE: April 2, 2004

The Department of Aviation is recommending Council approval of the above-referenced contract award to Parkhill, Smith and Cooper, Inc., per the A & E Selection Committee's recommendation.


The Airport is in the process of a major industrial, commercial and golf course development. In order to complete this process in a timely manner, to allow for the most expeditious contribution to the community's economic development and to capitalize on the Airport's \$60 million investment in air cargo facilities, the services of several disciplines are required, including those of a civil engineering firm. Of utmost priority will be the design of the 150-acre industrial park infrastructure, to be done in cooperation with the golf course design team and master plan consultants.

The attached excerpt from our proposal to the Federal Aviation Administration details the required coordination of planning, design and civil engineering services in order to reach our goal.

ENGINEERING DEPARTMENT
Excellence through Teamwork

CITY OF EL PASO
APR 1 11 29

TO: Mayor Joe Wardy
and City Representatives

FROM: Irene Ramirez, P.E. 
Interim City Engineer

DATE: April 1, 2004

SUBJECT: City Council Agenda

COUNCIL AGENDA DATE: April 6, 2004
AGENDA ITEM NO.: _____

The following item has been reviewed and we recommend approval.

RESOLUTION: District #: N/A

That the Mayor be authorized to sign an **Agreement for Civil Engineering Services- Airport Assignments** by and between the **CITY OF EL PASO** and **PARKHILL, SMITH & COOPER, INC.**, for a two (2) year period for an amount not to exceed FIVE HUNDRED THOUSAND and 00/100 Dollars (\$500,000.00). (Citywide)

EXPLANATION:

The Consultant shall provide labor, equipment, materials, engineering and related civil engineering consulting services for airport projects on an as needed basis for a two (2) year period.

cc: Jim A. Martinez, Chief Admin. Officer
Adrian Ocegueda, Executive Assistant to the Mayor
Liza A. Elizondo, City Attorney
Raymond L. Telles, Assistant City Attorney
Patricia Aduato, Deputy CAO, Building & Planning Services

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign an **Agreement for Civil Engineering Services-Airport Assignments** by and between the **CITY OF EL PASO** and **PARKHILL, SMITH & COOPER, INC.**, for a two (2) year period for an amount not to exceed FIVE HUNDRED THOUSAND and 00/100 Dollars (\$500,000.00). (Citywide)

ADOPTED THIS 6TH DAY OF APRIL 2004.

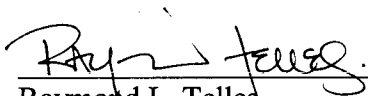
THE CITY OF EL PASO

Joe Wardy, Mayor

ATTEST:

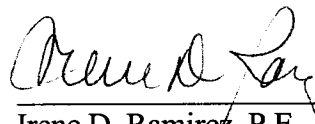
Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:



Raymond L. Telles
Assistant City Attorney

APPROVED AS TO CONTENT:



Irene D. Ramirez, P.E.
Interim City Engineer

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

AN AGREEMENT FOR
CIVIL ENGINEERING SERVICES
AIRPORT ASSIGNMENTS

THIS AGREEMENT is made this **6th day of April, 2004** by and between **THE CITY OF EL PASO**, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter called the “**Owner**,” and **PARKHILL, SMITH & COOPER, INC.**, a corporation registered in the state of Texas, hereinafter called the “**Engineer**”.

WHEREAS, the Owner intends to engage the Engineer to perform civil engineering services or other consulting services as necessary for the El Paso International Airport, from time to time on an as-needed basis, in connection with construction projects designed by the Owner in-house or designed by Consultants hired by the Owner;

NOW, THEREFORE, the Owner and Engineer for the consideration hereinafter set forth agree as follows:

I. BASIC SERVICES OF THE ENGINEER

A. General

1. The Engineer agrees to perform professional civil engineering services as hereinafter stated in Attachment “A”, which is attached hereto and made a part hereof for all purposes, to the full satisfaction of the Owner.
2. The Engineer shall serve as the Owner’s professional representative and shall give consultation and advice to the Owner during the performance of the Engineer’s services.
3. The Owner is relying upon the skill and expert knowledge of the Engineer to furnish the Owner with an accurate product. The Owner’s review of any documents prepared by the Engineer is only general in nature, and its obligation to approve and accept the work in no way relieves the Engineer of responsibility for any specific deficiencies in the Engineer’s work product.

B. Work Products/Standards All work prepared by the Engineer following the Owner’s written authorization to proceed for each individual project, shall:

1. Be delivered as electronic digital data contained on 3 ½ inch diskettes, which shall be readable by and compatible with the City Engineering Department’s AutoCAD platform and shall include at a minimum coordinate information and drawings.

2. Include a hard copy consisting of original field books and drawings, to specified scale.
3. Upon completion of all work with respect to each individual project, the Engineer shall prepare Design Documents/Reports and shall furnish **five (5) copies** of the Design Documents/Reports to the Owner.

II. **ADDITIONAL SERVICES OF THE ENGINEER**

A. **General** If authorized in writing by the Owner, the Engineer shall perform or obtain additional services of the following types which are not covered herein, which shall be paid for by the Owner as indicated in this Agreement:

1. Provide additional services due to significant changes in the general scope of the Project.
2. Revise previously approved designs except when said revisions are required as a result of errors, negligence, or other fault on the part of the Engineer.
3. Furnish additional copies of the Design Documents/Reports in excess of those required in Section I hereof.
4. Serve as an expert witness for the Owner in any litigation or other proceeding involving any assigned projects.
5. Provide additional services in connection with the project not otherwise provided for in this Agreement except where those services are required as a result of negligence or other fault on the part of the Engineer.

III. **THE OWNER'S RESPONSIBILITIES**

The Owner shall:

- A. Provide available information as to its requirements in connection with each Project request.
- B. Make known all information pertaining to a Project request, including previous reports and other data relative to cost estimate.
- C. Obtain access to and make provisions for the Engineer to enter upon public and private lands as required for the Engineer to perform work under this Agreement.
- D. Review Design Documents/Reports prepared by the Engineer and render in writing decisions pertaining thereto within a reasonable time so as not to unreasonably delay the work of the Engineer.

- E. Designate the City Engineer of the City of El Paso as the Owner's representative with respect to the Civil Engineering Services to be performed under this Agreement. The City Engineer shall have complete authority to transmit instructions, receive information, interpret and define Owner's policies and decisions with respect to materials, equipment, elements and systems pertinent to the work covered by this agreement.
- F. Give prompt written notice to the Engineer whenever the Owner observes or otherwise becomes aware of any defect in connection with a Project request.
- G. Furnish or direct the Engineer to provide at the Owner's expense, necessary additional services as stipulated in this Agreement or other services as required by the Owner.

IV. **PERIOD OF AGREEMENT AND SERVICES**

- A. This Agreement comes into effect and full force, and is legally binding, on the date noted above. This Agreement shall remain in full force for a period of **two (2) years** from the effective date of this Agreement for Civil Engineering Services – Airport assignments. If the Engineer is engaged in providing engineering services at the time of the termination of this Agreement, the Agreement shall be extended for a reasonable period of time to ensure the completion of the current assignment. Engineering services provided by the Engineer in the completion of such current assignment shall also be governed by the unit price fee schedule, which is attached hereto as Attachment "B."
- B. The Engineer shall begin work upon a written **Notice to Proceed** issued by the City Engineer. The period of service per project shall be determined by the Owner together with the Engineer prior to each Notice to Proceed and shall be specified in the written Notice to Proceed. The period of service shall be determined in accordance with the complexity of the project assigned to the Engineer. The Engineer shall complete the engineering services, Design Document/Reports and other consultant services within the designated time frame for each project stated in the written Notice to Proceed.

V. **PAYMENTS TO THE ENGINEER**

A. **Payments for Basic Services of the Engineer Under Section I**

- 1. Compensation of the Engineer
 - a) The Owner shall pay the Engineer for requested services in accordance with the hourly rate schedule, which is attached hereto as Attachment "B" and incorporated herein for all purposes.
 - b) The total value for the term of the Agreement shall not exceed **FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$500,000.00)**.

2. The Design Documents/Reports to be prepared under this Agreement will fall under various funding programs, possibly including general revenue, federal grants and bond authorization of various types. The funding source for each individual project will be specified in the written Notice to Proceed issued by the City Engineer. In the event that the funding source for a particular project is a federal grant, the Engineer hereby agrees that all grant assurances will be complied with.
3. Payment on account of said fees for the basic services provided herein, shall be made upon the preparation and completion of the Design Documents/Report, after the said Design Documents/Report has been accepted and approved in writing by the Owner. Payments shall be made upon presentation of the Engineer's statement to the Owner, and the written approval by the Owner. The Engineer's statement shall set forth the level of each staff member performing work, the number of hours performed, a description of the work performed, together with copies of receipts or other evidence satisfactory to the Owner's representative. The Engineer's failure to furnish such supporting data shall constitute Engineer's waiver and release of any claim against the Owner with respect to such disputed billing item, pursuant to the set off provisions as noted herein.

B. Payments for Additional Services of the Engineer Under Section II

If authorized by written amendment to this Agreement:

1. The Owner shall pay the Engineer for additional services performed by personnel assigned to the regularly established office of the Engineer at the hourly rates established in Attachment "B" hereof, plus the reasonable actual cost of the reimbursable expenses as hereinafter defined.
2. Reimbursable expenses shall mean the reasonable actual expense of transportation and subsistence of principals and employees while traveling in connection with the Project, field office expenses, toll telephone calls and telegrams, reproduction of reports, and similar Project related items. Such expenses must be authorized in writing by the Owner to be eligible for reimbursement.
3. The Owner shall pay the Engineer at the rate of **ONE THOUSAND TWO HUNDRED FIFTY-FOUR and NO/100 DOLLARS (\$1,254.00) per day** or any portion thereof, for serving as an expert witness, plus reasonable out-of-pocket expenses.
4. The Owner shall make payments for additional services monthly, upon presentation of the Engineer's detailed statement or invoice and supporting documentation in accordance with Section V. hereof, and the Owner's written approval.

C. General

1. The payroll cost of salaries and wages used as a basis for payment under Section V.B.1., shall mean the cost of salaries and wages paid to principals and employees engaged directly on the Project, including but not limited to social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation, and holiday pay applicable thereto.
2. If this Agreement is terminated during the performance of civil engineering services, the Engineer shall be paid for services performed on the basis of a reasonable estimate of the portion of services completed prior to termination. In the event of any termination, the Engineer shall be paid to the extent services performed by the Engineer are completed and payment for such services is due, including payment for additional services. Any previous payments made to the Engineer shall be credited to the payments due under this Agreement. Such payment to the Engineer upon termination shall be full and final payment to the Engineer and any employees, subcontractors, or independent contractors employed by the Engineer, and the Engineer shall not be entitled to any other claims or damages against the Owner, including but not limited to lost profits, office expenses, or overhead expenses. Any previous payments made to the Engineer shall be credited to the payments due under this agreement.

VI. GENERAL CONSIDERATIONS

A. Termination

This Agreement may be terminated without cause for convenience of the Owner by giving **fifteen (15) days written notice** to the Engineer.

In the event of failure to perform in accordance with the terms herein, the Owner may terminate this Agreement by giving **seven (7) days written notice**. If this Agreement is so terminated, the Engineer shall be paid as provided herein.

The termination of this Agreement by the Owner shall not be construed as a release of any claims that the Owner may be lawfully entitled to assert against the Engineer. The Engineer shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any breach of the Agreement by the Engineer. The Owner may withhold any payment to the Engineer for the purpose of setoff until such time as the exact amount of damages due the Owner from the Engineer is determined.

B. Ownership of Documents

Design documents/reports, studies, tracings and any other recordations prepared or obtained under the terms of this Agreement shall be delivered to and become the property of the Owner prior to payment to the Engineer for work under this Agreement. If this Agreement is terminated at any time for any reason prior to payment to the

Engineer for work under this Agreement, all reports, studies, tracings and any other recordations prepared or obtained under the terms of this Agreement shall upon termination be delivered to and become the property of the Owner prior to payment to the Engineer. Sketches, charts, computations, and all other data prepared for and under this Agreement shall be made available to the Owner upon request and without restriction on their use, or further compensation to the Engineer. The Owner in requiring ownership of the above listed documents hereby releases the Engineer from all responsibility in connection with their use on any project other than their use on this Project.

C. **Insurance**

The Engineer shall secure and maintain at the Engineer's expense such Comprehensive Liability, Property Damage Liability, Vehicle Liability and Workers' compensation Insurance as shall protect the Engineer from workers' compensation claims under applicable state law and from all claims from bodily injury, death, or property damage which may arise from the performance of the Engineer's services under this Agreement. The Engineer shall provide or secure public liability insurance for personal injuries or death, arising out of any one accident or other cause, in a minimum sum of **TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$250,000.00)** for one person and **FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,00.00)** for two or more persons; and in addition, shall provide property damage liability insurance in a minimum sum of **ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00)** for property damages arising out of any one accident or other cause, or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claim Act, whichever is greater. The Engineer shall procure and shall maintain at the Engineer's sole expense, Professional Liability Insurance for the benefit of the Owner to cover the errors and omissions of the Engineer, its principals or officers, agents, or employees in the performance of this Agreement.

The Engineer shall maintain said insurance with insurance underwriters authorized to do business in the State of Texas, satisfactory to Owner. All policies required by this Agreement, with the exception of Workers' compensation Insurance and Professional Liability Insurance, shall name the Owner, its officials, servants, agents, and employees as additional insureds. The Engineer shall, prior to the execution of this Agreement, furnish the Owner with a certificate from the insurance carrier showing such insurance to be in full force and effect during the entire term of this Agreement, or shall deposit with Owner copies of said policies, if requested by Owner. Said policies or certificates shall contain a provision that written notice of cancellation or of any material change in said policy by the insurer shall be delivered to Owner **thirty (30) days** in advance of the effective date thereof and shall show the type, amounts, classes of operation covered, effective dates and dates of expiration of policies.

D. **Successors and Assigns**

This Agreement shall be binding on the Owner, its successors and assigns, and on the Engineer, the Engineer's partners, successors, executors, administrators, legal representatives, and assigns. However, the Engineer shall not assign, sublet, or transfer any interest in this Agreement without the written consent of the Owner. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the Owner.

E. **Compliance with Laws**

The Engineer shall comply with all federal, state, and local laws and ordinances applicable to the work covered hereunder.

F **Change of Legal Status**

In the event that there is a change in the legal status of the entity that has entered into this Agreement with the Owner, including but not limited to the dissolution of a partnership or a corporate entity, the Owner shall have the right to: 1) immediately terminate this Agreement for convenience; or 2) consent to the change in the legal status and continue under this Agreement; or 3) enter into an Agreement with any person, corporation or association that it deems to be qualified to perform the services requested herein with no further legal obligation or liability under this Agreement.

G. **Auditing Records**

Engineer's records subject to audit shall include but not be limited to records which, in the Owner's discretion, have a bearing on matters of interest to the Owner in connection with the Engineer's work for the Owner and shall be open to inspection and subject to audit and/or reproduction by Owner's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of (a) Engineer's compliance with contract requirements, and (b) compliance with provisions for computing Direct Personnel Expense with reimbursables, if applicable.

Such records subject to audit shall also include those records necessary to evaluate and verify direct and indirect costs, (including overhead allocations) as they may apply to costs associated with this Agreement. In those situations where Engineer's records have been generated from computerized data, Engineer agrees to provide Owner's representatives with extracts of data files in computer readable format on data disks or suitable alternative computer data exchange format.

The Owner or its designee shall be entitled to audit all of the Engineer's records related to this Project, and shall be allowed to interview any of the Engineer's employees, pursuant to the provisions of this section throughout the term of this Agreement and for a period of **three (3) years** after final payment or longer if required by law. Such audits may require inspection and photo copying of selected documents from time to time at reasonable times and places

VII. SPECIAL PROVISIONS

A. Time of Essence; Liquidated Damages

TIME IS OF THE ESSENCE in this Agreement. The Engineer agrees to accept and adhere to the schedule established on a per project basis and per the written Notice to Proceed. Failure of the Engineer to adhere to this schedule without due cause, approved in writing by the City Engineer, shall cause damage to the City which the Engineer agrees to compensate at the rate of **ONE HUNDRED AND NO/10 DOLLARS (\$100.00) per day**, without the right of setoff or counterclaims.

It is hereby understood and mutually agreed, by and between the Engineer and the Owner, that the date of beginning and the time for completion as specified in the Agreement of the work to be done hereunder are **ESSENTIAL CONDITIONS** in the Agreement. It is further mutually understood and agreed that the work embraced in this Agreement shall be commenced on a date to be specified in the **“Notice to proceed.”**

The Engineer agrees that said work shall be prosecuted regularly, diligently, and uninterrupted as such rate of progress as shall ensure completion thereof within the time specified. It is expressly understood and agreed, by and between the Engineer and the Owner, that the time for the completion of the work described herein is a reasonable time for the completion of the same.

If the Engineer shall neglect, fail, or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the Owner, then the Engineer does hereby agree, as a part consideration for the awarding of this Agreement, to pay the Owner the amount specified in this Agreement, not as a penalty but as liquidated damages for such breach of Agreement as hereinafter set forth, for each and every calendar day that the Engineer shall be in default after the time stipulated in the Agreement for completing the work.

The said amount is fixed and agreed upon by and between the Engineer and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain, and said amount is agreed to be the amount of damages which the Owner would sustain.

It is further agreed that **TIME IS OF THE ESSENCE** in each of the specifications wherein a definite and certain length of time is fixed for the performance of any act and in every portion of this Agreement. Additionally, time shall be of the essence where under this Agreement an additional time is allowed for the completion of any work. However, when the Owner determines in writing that the Engineer is without fault and the reasons for a time extension are acceptable, the Engineer shall not be charged with liquidated damages or any excess cost.

B. Equal Employment Opportunity

In providing services under this Agreement, the Engineer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, or national origin. The Engineer shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, disability, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Engineer shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the government setting forth the provisions of this nondiscrimination clause. The Engineer shall state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, age, disability, or national origin. The Engineer shall incorporate the foregoing requirements of this section in all of its subcontracts for work to be performed on this Project.

C. Obligations of the Engineer with Respect to Third Party Relationships

The Engineer shall remain fully obligated under the provisions of this Agreement notwithstanding its designation of any third party or parties for the undertaking of all or any part of the project with respect to such assistance is being provided under this Agreement.

D. Interest of Members of Local Governing Body or Other Public Officials

No member of the governing body of the City of El Paso, and no other public official of the City of El Paso who exercises any function or responsibility with respect to the Project, shall during his or her tenure or for **one (1) year** thereafter, have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project assisted under this Agreement.

E. Law Governing Agreement

For the purpose of determining place of Agreement and the law governing same, this Agreement is entered into the City and County of El Paso, State of Texas, and shall be governed by the laws of the State of Texas. **Venue shall be in the County of El Paso, Texas.**

F. Indemnification

THE OWNER SHALL NOT BE SUBJECT TO ANY OBLIGATIONS OR LIABILITIES OF THE ENGINEER INCURRED IN THE PERFORMANCE OF THIS AGREEMENT. THE ENGINEER EXPRESSLY AGREES TO AND SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND THE OWNER, ITS OFFICERS, AGENTS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF EVERY KIND, INCLUDING BUT NOT LIMITED TO ALL EXPENSES INCURRED IN THE INVESTIGATION, HANDLING, DEFENSE,

LITIGATION, SETTLEMENT AND/OR PAYMENT OF JUDGMENT INCLUDING COURT COSTS AND ATTORNEY'S FEES, FOR BODILY INJURY, ILLNESS, PHYSICAL, OR MENTAL IMPAIRMENT TO, OR DEATH OF ANY PERSON, OR FOR DAMAGE OR DESTRUCTION TO ANY PROPERTY INCLUDING THE LOSS OF USE THEREOF, ARISING FROM OR RELATING TO ANY ACT(S) OR OMISSIONS(S) OF THE ENGINEER, ITS PRINCIPALS OR OFFICERS, AGENTS, EMPLOYEES, OR SUBCONTRACTORS IN THE PERFORMANCE OF THIS AGREEMENT.

G. Authorization To Enter Into Agreement

If the Engineer signs this Agreement as a corporation, each of the persons executing this Agreement on behalf of the Engineer warrants to the Owner that the Engineer is a duly authorized and existing corporation, that the Engineer is qualified to do business in the State of Texas, that the Engineer has full right and authority to enter into this Agreement, and that each and every person signing on behalf of the Engineer is authorized to do so. Upon the Owner's request, the Engineer shall provide evidence satisfactory to the Owner confirming these representations.

H. Entire Agreement

This Agreement, including attachments, constitutes and expresses the entire agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement shall not be amended or modified except by written instrument signed by both parties.

I. Remedies/Sanctions for Breach of Agreement

Violation or breach of any terms of this Agreement by the Engineer shall be grounds for terminating the Agreement, and any increased cost arising from the Engineer's default, breach or violation of the terms herein, shall be paid by the Engineer. The remedies herein reserved shall be cumulative and additional to any other or further remedies in law or equity. No waiver of a breach of any provisions of this Agreement shall constitute a waiver of any other breach of such provision.

J. Notices

Any notice, demand, request, consent, or approval that either party hereto may or is required to give the other shall be in writing and shall be either personally delivered or sent by certified mail-return receipt requested, to the following addresses:

To Owner:

**The Honorable Mayor
The City of El Paso
Two Civic Center Plaza, 10th Floor
El Paso, Texas 79901-1196**

Copy to:

**City Engineer
The City of El Paso
Two Civic Center Plaza, 4th Floor
El Paso, Texas 79901-1196**

To Engineer:

**Parkhill, Smith & Cooper, Inc.
Attn: Mr. Terry G. Bilderback, P.E.
810 E. Yandell
El Paso, Texas 79902**

VIII. COMPLIANCE WITH ALL LAWS - FEDERAL FUNDING REQUIREMENTS

Engineer, at Engineer's expense, agrees that it will operate and perform its responsibilities and covenants under this Agreement in accordance with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the Owner or Engineer with respect to the use of federal funds and nondiscrimination in the administration of contracts which are funded, in whole or in part, with federal funds.

Specifically, and not in limitation of the foregoing, Engineer agrees that the following covenants shall apply throughout the performance of this Agreement because federal funds are involved and that, in the event of breach of the above covenant or breach of any of the following covenants, Owner shall have the right to terminate this Agreement.

A. Anti-Kickback Rules

Salaries of Architects, Engineers, draftsmen, technical engineers, technicians and other employees and consultants performing work under this Agreement shall be paid unconditionally and not less often than once a month without deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C., Sec. 874; and Title 40 U.S.C., Sec. 276c). The Engineer shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this Agreement to ensure compliance by subcontractors with such regulations, and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

B. Section 3 Clause

The following provisions are incorporated into this Agreement, as required by 24 CFR 135.20 (b):

1. To the extent that the work to be performed under this Agreement is on a project assisted under a program providing direct federal financial

assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given lower income residents of the Project be awarded to business concerns, which are located in or owned in substantial part by persons residing in the area of the Project.

2. The parties to this Agreement shall comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Agreement. The parties to this Agreement certify and agree that they are under no contractual or other disability, which would prevent them from complying with these requirements.
3. The Engineer shall send to each labor organization, or representative of workers with which the Engineer has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of the Engineer's commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
4. The Engineer shall include this Section 3 Clause in every subcontract for work in connection with the Project and shall, at the direction of the applicant for or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The Engineer shall not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and shall not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
5. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the construction contract, shall be a condition of the federal financial assistance provided to the Project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its Engineers and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or

contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

6. That in the furnishing of services hereunder for the purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Engineer shall furnish such services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said regulations may be amended.
7. That in the furnishing of services hereunder for the purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Engineer shall furnish such services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, as said Regulation may be amended. Engineer shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.
8. That no person on the grounds of race, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or is otherwise subjected to discrimination in the performance of this Agreement.

C. **Access to Records**

In accordance with OMB Circular A-102, Attachment "O", Sec. 4h, the Owner, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Engineer which are directly pertinent to the Owner's Community Development Block Grant Program for the purpose of making audit, examination excerpts, and transcriptions.

D. **Interest of Certain Federal Officials**

No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit to arise herefrom.

E. **Davis-Bacon Wages**

In preparation of any cost estimates and project budgets, described in Article VI, hereof, the Engineer shall base such estimates and project budgets on the premise that the regulations and requirements enumerated in 29 CFR Part 5, Subpart A

(Davis-Bacon and Related Act) apply to the project and must be followed and obeyed.

F. **Termination for Cancellation of Grant**

Should this Agreement be terminated as a result of cancellation of federal funds covering this Project, the Owner shall promptly notify the Engineer of the cancellation by certified mail-return receipt requested, whereupon the Engineer shall immediately, on receipt of the letter, cease and desist from performing any other work or services hereunder. In such an event, the Engineer will be paid for professional services performed to said date upon furnishing the Owner a progress report and an invoice to such date, and upon acceptance of the work by the Owner.

(SIGNATURES BEGIN ON THE FOLLOWING PAGE)

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

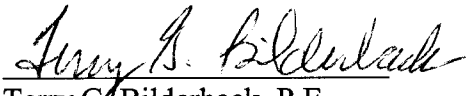
OWNER: THE CITY OF EL PASO

Joe Wardy, Mayor

ATTEST:

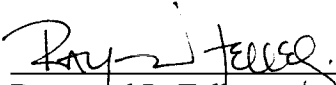
Richarda Duffy Momsen, City Clerk

ENGINEER: Parkhill, Smith & Cooper, Inc.



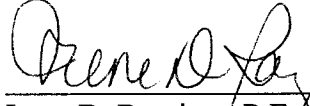
Terry G. Bilderback, P.E.
Vice President

APPROVED AS TO FORM:



Raymond L. Telles
Assistant City Attorney

APPROVED AS TO CONTENT:



Irene D. Ramirez, P.E.
Interim City Engineer

ACKNOWLEDGMENTS

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

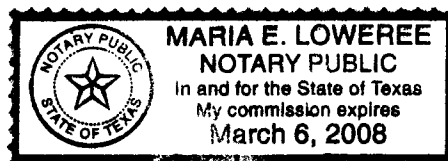
This instrument was acknowledged before me on this _____ day of _____, 2004,
by _____, as **Mayor of the City of El Paso, Texas.**

Notary Public, State of Texas

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this 1st day of April, 2004,
by **Terry G. Bilderback, P.E. as Vice President of Parkhill, Smith & Cooper, Inc.**

Maria E. Lowerree
Notary Public, State of Texas



ATTACHMENT “ A ”

PROJECT SCOPE

TITLE: Civil Engineering Consulting Services – Airport Assignments

LOCATION: El Paso International Airport

GENERAL DESCRIPTION: This contract will be used for assignments at the Airport. See attached Scope of Services for details of the type of services covered.

SERVICES REQUIRED:

<input checked="" type="checkbox"/> Investigation	<input checked="" type="checkbox"/> Planning
<input checked="" type="checkbox"/> Soils Investigation	<input checked="" type="checkbox"/> Design
<input checked="" type="checkbox"/> Bidding & Construction	<input checked="" type="checkbox"/> Surveying

PRODUCTS REQUIRED:

<input checked="" type="checkbox"/> Study / Report	<input checked="" type="checkbox"/> Plans, Specifications, Estimates
--	--

GENERAL REQUIREMENTS AND CRITERIA:

1. Design must meet all applicable City Codes and Ordinances.
2. Design must comply with Engineering Department Guidelines.
3. Design must comply with all local, state and federal laws and regulations, including but not limited to the Americans with Disabilities Act.

OTHER CONSIDERATIONS:

1. Work to be coordinated with the Engineering Department.
2. This contract will be for a two-year term with fees not to exceed \$500,000 for the term.

PROJECT SCHEDULE:

Project Schedules to be developed for each assignment as needed.

Scope of Services

General Description:

1. Studies and Reports - Engineer shall perform research and database creation to conduct studies and produce reports to include investigations, drawings, sketches, and cost estimates. Reports shall include description of alternatives considered, estimates of construction costs, conclusions and recommendations. This task includes the preparation of drainage studies, master drainage plans, feasibility studies, structural analysis, design analysis and other studies as required.
2. Preparation of plans, specifications and cost estimates for design of street and drainage improvements, other site improvements, drainage improvements, subsurface utility engineering to include records research and field verification, design of pavement and asphalt improvements (rehabilitation, reconstruction and new installation) to include airfield and landside areas of the Airport; subdivision design for land development.
3. Preparation of plans, specifications and cost estimates for design of buildings, structures and similar construction.
4. Constructibility, Biddability, Operability Reviews and Value Engineering. The Engineer shall provide constructibility, biddability, and operability reviews on proposed construction projects. The review will cover such items as detail and cut omissions and inconsistencies between plans and specifications, vague or ambiguous notes and references and lack of coordination between the drawings of all disciplines involved in the project.
5. Full time Project Representative. The Engineer shall designate and assign a project representative, subject to the approval of the Owner, who will serve as the point of contact during the on-site observation and inspection of the construction work in progress and to ascertain that the work is properly executed in conformance with the drawings and specifications.
6. Review of Shop Drawings, Materials, Fixtures, and Equipment. The Engineer shall review shop drawings and materials submittal and make recommendations for approval or disapproval. Final approval shall be by the Owner.
7. Meetings and Conferences. Periodic meetings shall be held whenever requested by the Owner for discussion of questions and problems relating to the work being performed by the Engineer. The Engineer shall be required to attend and participate in all design conferences pertinent to the work being performed.
8. The Engineer shall appoint a project coordinator or manager to serve as a single point of contact and liaison between the Engineer and the Owner for all work required under this agreement. The project coordinator or manager will be responsible for the complete coordination of all work developed under each assignment. All work will be accomplished with adequate internal controls and review procedures to eliminate conflicts, errors, and omissions, and to insure the technical accuracy of all design information.
9. Other civil engineering functions as may be required by the Owner.

ATTACHMENT "B"



February 25, 2004

Mr. Javier Reyes
Engineering Program Manager
City of El Paso
Two Civic Center Plaza
El Paso, Texas 79901-1196

Re: Fee Proposal – Civil Engineering Consulting Services
Airport Assignments

Dear Mr. Reyes:

This is in response to our conversation this morning concerning the hourly rates submitted by Parkhill, Smith & Cooper for the reference engineering assignments. The following reflects the agreed upon rates.

YEAR 2004:

Principal	\$122.00
Project Manager	\$114.00
Project Civil Engineer	\$98.00
Civil Engineer	\$85.00
EIT/Civil Designer	\$76.00
CADD Technician	\$64.00
Clerical/Support	\$51.00

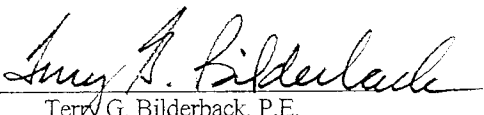
For the second year, we propose the following hourly rates.

YEAR 2005:

Principal	\$126.00
Project Manager	\$117.50
Project Civil Engineer	\$101.00
Civil Engineer	\$87.50
EIT/Civil Designer	\$78.00
CADD Technician	\$66.00
Clerical/Support	\$52.50

Sincerely,

PARKHILL, SMITH & COOPER, INC.

By 
Terry G. Bilderback, P.E.
Vice President

TGB/jd

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Parkhill, Smith & Cooper, Inc.

Engineers • Architects • Planners
810 E. Yandell, El Paso, Texas 79902
(915) 533-6811 FAX (915) 544-2059

Introduction

This proposal is a conceptual plan for future industrial and commercial development at El Paso International Airport (EPIA). This plan is illustrative, and its purpose is to depict one potential concept that would include the development of approximately 1,500 acres of Airport property.

The 1998 Master Plan Update cites a land bank of 3,000 acres available for non-aviation use. The primary purpose of the concept is to support the associated financial projections and to analyze the initial feasibility of this development. Sections of this proposed development, including a golf course and initial 150-acre industrial park, was reviewed and endorsed by EPIA's airlines at the AAAC meeting held on November 18, 2003. At this meeting, it was once again made clear that EPIA does not charge airlines capital costs above \$114,000 in our rate base, and that EPIA historically maintains some of the lowest landing fees in the Southwest. The source of this financial ability is our existing industrial, commercial and hotel developments.

As background information, a number of facts are relevant. Perhaps the most significant is **EPIA's 25-year history of successful economic development**. Currently, the Airport has over 1,000 acres in mature commercial and industrial development. This development includes the successful Butterfield Trail Industrial Park (600 acres), which went from concept to full occupancy in less than 25 years. Also included are six hotels constructed since 1980 that comprise over 12% of El Paso's hotel room inventory. These developments have allowed the Airport the financial means to construct the United States-Mexico border's largest and most modern Air Cargo Center. This development, with a total cost approaching \$60 million was constructed without debt service, and was paid for with revenues from the Airport's Enterprise Fund. The roadways associated with this development, as well as the core Air Cargo functions, are now positioned to serve as the infrastructure to support additional commercial and industrial development. This, in turn, will add additional financial strength to the Airport's Enterprise Fund, benefiting our air carriers, aviation tenants and terminal users.

The Department of Aviation, in anticipation of the planned development, has initiated the following:

- 1) Master Plan Update – EPIA is in the process of soliciting Requests for Proposals for an update to the 1998 Master Plan. Consultants' RFPs are due to the City of El Paso on January 14, 2004.
- 2) Engineering Consulting Services – The City of El Paso is also in the process of selecting an Engineering firm to provide support as needed for development issues.
- 3) Golf Course Design Team – The City of El Paso is also in the process of selecting a design team to integrate a golf course into the proposed development.

In short, by March 2004, we will have a comprehensive team with all the required resources to begin the actual development phase. We understand the need to have this development fully integrated into the Master Plan process, with aviation needs being the prime driver.

It should be noted, however, that our vision for industrial/commercial development is that it be complementary and linked to our Air Cargo Center. Today, with Mexico as the #1 trading partner of the United States, and with over one-third of Mexico's maquila manufacturing in our trade area, El Paso's air cargo plays a major role in supporting the just-in-time nature of this activity. The prime location adjacent to these modern air cargo facilities has a distinct and discrete value as a result of recent investments in air cargo infrastructure. We would now like to fully capitalize on our earlier investment.

We have been focused on and working toward this development for a number of years and view it as a proactive measure to increase future Airport revenues. **Operating a safe Airport remains our number one priority. Additionally, maintaining and developing aviation facilities is the prime driver in Airport management decision-making as related to capital improvement projects.** Our industrial/commercial revenue base allows us a greater fiscal flexibility in making aviation-related improvements.

Also included within this package is a retouched photo showing an illustrative version of our proposed development. We look forward to refining our work and making a presentation to your office in early January 2004 for the required approval by the Federal Aviation Administration, subject to the Master Plan process and inclusion in our approved Airport Layout Plan.